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 FAIRCHILD SEMICONDUCTOR CORP.

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN FRANCISCO DIVISION

19 ALPHA & OMEGA SEMICONDUCTOR,
 20 INC., a California corporation; and
 21 ALPHA & OMEGA SEMICONDUCTOR,
 LTD., a Bermuda corporation,

22 Plaintiffs and Counterdefendants,
 23 v.

24 FAIRCHILD SEMICONDUCTOR
 25 CORP., a Delaware corporation,

26 Defendant and Counterclaimant.

Case No. C 07-2638 JSW
 (Consolidated with Case No. C-07-2664 JSW)

**JOINT CASE MANAGEMENT
 CONFERENCE STATEMENT AND
 [PROPOSED] ORDER**

27 **AND RELATED COUNTERCLAIMS**

Pursuant to Civil L.R. 16-9(a) and Patent L.R. 2-1(a), plaintiffs and counterdefendants Alpha & Omega Semiconductor, Ltd. and Alpha & Omega Semiconductor, Inc. (collectively, “AOS”) and defendant and counterclaimant Fairchild Semiconductor Corp. (“Fairchild”) jointly submit this Case Management Statement and Proposed Order and request the Court to adopt it as the Case Management Order in this case. As described below, the Court consolidated this case for all purposes with *Fairchild Semiconductor Corp. v. Alpha & Omega Semiconductor, Inc., et al.*, Case No. 07-2664 JSW, and the parties request that all provisions of this Case Management Statement and Proposed Order apply to both cases.

I. Jurisdiction and Service

This is an action arising under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. This Court has jurisdiction over the subject matter of this action, including Fairchild’s counterclaims, pursuant to 28 U.S.C. §§ 1331 and 1338. The parties agree that venue is proper in this district and that the Court has personal jurisdiction over all current parties. There are no remaining parties to be served.

II. Description Of The Case and Disputed Factual Issues

This is a patent infringement action. The patents-in-suit relate to certain methods and designs for semiconductor technology. On May 17, 2007, AOS filed the above-captioned suit (the “AOS” action) for patent infringement and declaratory judgment against Fairchild seeking relief for Fairchild’s alleged willful infringement of U.S. Patent No. 5,907,776 (the ““776 patent”) and U.S. Patent No. 5,767,567 (the ““567 patent”) (collectively, “the AOS patents-in-suit”). AOS also seeks declaratory judgment of alleged non-infringement of U.S. Patent No. 6,429,481 (the ““481 patent”) and U.S. Patent No. 6,710,406 (the ““406 patent”).

On May 18, 2007, Fairchild filed suit against AOS, *Fairchild Semiconductor Corp. v. Alpha & Omega Semiconductor, Inc., et al.*, Case No. 07-2664 (the “Fairchild” action). In its complaint, Fairchild seeks relief for AOS’s alleged willful infringement of U.S. Patent No. 6,429,481 (the ““481 patent”), U.S. Patent No. 6,710,406 (the ““406 patent”), U.S. Patent No. 6,521,497 (the ““497 patent”), and U.S. Patent No. 6,828,195 (the ““195 patent”) (collectively, “the Fairchild patents-in-suit”).

1 Subsequently, Fairchild asserted six counterclaims in the *AOS* action. Fairchild's first and
 2 second counterclaims seek declaratory judgment of alleged non-infringement and alleged
 3 invalidity of the '776 and '567 patents – the two patents AOS asserted against Fairchild in the
 4 *AOS* action. Fairchild additionally seeks relief for alleged willful infringement of the '481, '406,
 5 '497, and '195 patents – the four patents Fairchild asserted against AOS in the *Fairchild* action.

6 This Court deemed the two cases to be related within the meaning of Civil Local Rule 3-
 7 12 and the later-filed *Fairchild* action was reassigned to the Honorable Jeffrey S. White on June
 8 15, 2007. Pursuant to the parties' stipulation, the Court thereafter consolidated the two actions
 9 into the *AOS* action, Civil Action No. 07-2638, on July 31, 2007.

10 AOS asserts that Fairchild has directly, indirectly, contributorily and/or by inducement
 11 infringed and continues to infringe the AOS patents-in-suit by its manufacture, use, sale,
 12 importation and/or offer for sale of certain products that embody inventions claimed in the AOS
 13 patents-in-suit. AOS alleges that this infringement is willful and deliberate. Fairchild denies
 14 AOS's allegations, including that Fairchild infringes the '776 and '567 patents. Fairchild also
 15 raises a number of affirmative defenses to AOS's claims, including that the '776 and '567 patents
 16 are invalid.

17 Fairchild asserts that AOS has directly, indirectly, contributorily and/or by inducement
 18 infringed and continues to infringe the Fairchild patents-in-suit by its manufacture, use, sale,
 19 importation and/or offer for sale of certain products that embody inventions claimed in the
 20 Fairchild patents-in-suit. Fairchild alleges that this infringement is willful and deliberate. AOS
 21 denies Fairchild's allegations, including that AOS infringes the '481, '406, '497, and '195
 22 patents. AOS also raises a number of affirmative defenses to Fairchild's counterclaims, including
 23 that the '481, '406, '497, and '195 patents are invalid.

24 The principal factual issues in dispute are:

- 25 1. whether Fairchild has infringed and is infringing the AOS patents-in-suit;
- 26 2. whether Fairchild has contributed to the infringement by others of the AOS
 27 patents-in-suit;
- 28 3. whether Fairchild has induced others to infringe the AOS patents-in-suit;

1 4. whether any such infringement by Fairchild is willful;
 2 5. whether AOS's patents-in-suit are valid;
 3 6. the amount of AOS's damages;
 4 7. whether AOS has infringed and is infringing the Fairchild patents-in-suit;
 5 8. whether AOS has contributed to the infringement by other of the Fairchild patents-
 6 in-suit;
 7 9. whether AOS has induced other to infringe the Fairchild patents-in-suit;
 8 10. whether any such infringement by AOS is willful;
 9 11. whether Fairchild's patents-in-suit are valid;
 10 12. the amount of Fairchild's damages.

11 **III. Description Of the Legal Issues**

12 The principal disputed legal issues are:

13 1. the construction of the claims of the patents-in-suit;
 14 2. the validity of the patents-in-suit;
 15 3. whether any infringement was willful, and if so, the amount of enhanced damages;
 16 4. whether an injunction (or injunctions) should issue if any of the patents-in-suit are
 17 found valid, enforceable, and infringed.

18 **IV. Motions**

19 There are no pending motions. The parties anticipate filing motions for summary
 20 judgment on the issues of infringement and/or invalidity.

21 **V. Amendment Of Pleadings**

22 AOS may seek to amend its complaint to allege infringement of additional patents.
 23 Likewise, Fairchild may seek to amend its counterclaims to allege infringement of additional
 24 patents. Neither party expects to add to or dismiss any of the current parties. The parties propose
 25 a deadline of November 16, 2007, for the amendment of the pleadings with the right to seek leave
 26 of the Court to amend the pleadings beyond that date.

27 **VI. Evidence Preservation**

28 AOS and Fairchild have taken steps, including the suspension of normal document

1 destruction programs and the institution of a litigation hold for both hardcopy documents and
 2 electronic documents, to preserve evidence relevant to the issues reasonably evident in this action,
 3 including interdiction of any document-destruction program and any ongoing erasure of e-mails,
 4 voice mails, and other electronically-recorded material.

5 **VII. Disclosures**

6 The parties conducted a conference pursuant to Federal Rule of Civil Procedure 26(f) on
 7 July 27, 2007. During that conference, the parties agreed that initial disclosures will be served no
 8 later than August 10, 2007. The parties each reserve the right to supplement their disclosures as
 9 discovery continues.

10 **VIII. Discovery**

11 The parties agree to the following discovery plan:

12 (a) Discovery Needed –

- 13 1. The alleged infringement of the asserted six patents
- 14 2. The alleged invalidity of the asserted six patents
- 15 3. The enforceability of the asserted six patents
- 16 4. The alleged damages resulting from the alleged infringement of each of the
 asserted six patents
- 17 5. If any asserted patent is found valid and infringed, whether the
 infringement was willful

18 (b) Bifurcation – The parties oppose bifurcation for discovery or trial.

19 (c) Interrogatories – The parties request that each party be allowed to serve a
 20 maximum of 25 interrogatories.

21 (d) Depositions –

22 AOS's Position: In view of the fact that these consolidated cases involve six patents with
 23 multiple inventors, AOS requests that each side be limited to 30 depositions lasting no more than
 24 10 hours per witness, with the exception that depositions that require an interpreter shall last no
 25 longer than 20 hours per witness.

26 Fairchild's Position: These consolidated cases involve the same six patents. The four

1 Fairchild patents-in-suit are related to the same parent patent application and share the same
 2 named inventors. Consequently, Fairchild believes that 20 depositions per side is sufficient.
 3 Fairchild requests that each deposition last no longer than seven hours per witness, with the
 4 exception that depositions that require an interpreter should last no longer than fourteen hours per
 5 witness.

6 (e) Requests for Admissions and for Documents – The parties agree that there should
 7 be no limits on requests for admissions or document discovery requests.

8 (f) Foreign Deponents – The parties agree that each party shall produce for deposition
 9 in the United States any foreign witness over which it has control.

10 (g) Representative Accused Products –

11 AOS's Position: Because this case is in its initial stages, AOS is not in a position to make
 12 an informed decision regarding the viability of using only representative accused products or the
 13 process by which the parties would select those products. AOS proposes that the parties discuss
 14 this issue as discovery progresses.

15 Fairchild's Position: Fairchild proposes that the parties agree to select representative
 16 accused products in order to reduce the amount of discovery and to reduce the length of trial.

17 **IX. Class Action**

18 This is not a class action.

19 **X. Related Cases**

20 Related cases C 07-2638 JSW and C 07-2664 JSW have been consolidated. The parties
 21 are not aware of any other related cases pending before another judge of this Court or before
 22 another court or administrative body.

23 **XI. Relief**

24 AOS seeks a declaration of non-infringement and invalidity of the '481 and '406 patents.
 25 AOS also seeks judgment of infringement of the '776 and '567 patents. AOS requests entry of a
 26 permanent injunction, an award of damages, including enhanced damages pursuant to 35 U.S.C.
 27 § 284, a declaration that the case is exceptional within the meaning of 35 U.S.C. § 285 and an
 28 award of attorney's fees and costs. AOS also seeks dismissal of all of Fairchild's counterclaims

1 asserting infringement of the '481, '406, '497, and '195 patents.

2 Fairchild seeks a declaration of non-infringement and invalidity of the '776 and '567
 3 patents. Fairchild also seeks judgment of infringement of the '481, '406, '497, and '195 patents.
 4 Fairchild requests entry of a permanent injunction, an award of damages, including enhanced
 5 damages pursuant to 35 U.S.C. § 284, a declaration that the case is exceptional within the
 6 meaning of 35 U.S.C. § 285 and an award of attorney's fees and costs.

7 **XII. Settlement and ADR**

8 The parties timely met and conferred pursuant to ADR Local Rule 3-5(a). During that
 9 meeting, the parties agreed to participate in private mediation and filed a Stipulation and
 10 [Proposed] Order Selecting ADR Process with the Court on July 27, 2007. The parties believe
 11 that mediation should be scheduled after they have had an opportunity to engage in sufficient
 12 discovery related to the (1) design, fabrication method, and structure of the accused products, and
 13 (2) invalidity allegations to allow for meaningful settlement discussions. It may also be more
 14 productive to conduct the mediation after the Court has issued its claim construction ruling.

15 **XIII. Consent To Magistrate Judge For All Purposes**

16 AOS's Position: AOS does not consent to the assignment of this case to a United States
 17 Magistrate Judge.

18 Fairchild's Position: Fairchild would agree to assignment of this case to a United States
 19 Magistrate Judge for jury trial subject to the approval of the parties.

20 **XIV. Other References**

21 The parties do not believe that this case is suitable for reference to binding arbitration, a
 22 special master, or the Judicial Panel on Multidistrict Litigation.

23 AOS's Position: AOS requests that this Court handle all claims construction, pretrial and
 24 trial issues.

25 Fairchild's Position: Fairchild would agree to having claims construction issues referred to
 26 a special master if the Court would find that to be an efficient use of its time.

27 **XV. Narrowing Of The Issues**

28 The parties are not aware of any issues that can be narrowed by agreement or motion at

1 this time. The parties believe that discovery is not mature enough and trial is too remote at this
 2 time to determine issues that can be narrowed, suggestions to expedite the presentation of
 3 evidence at trial, or whether bifurcation of issues, claims or defenses is appropriate. The parties
 4 intend to address these issues as discovery proceeds and the issues become clearer.

5 **XVI. Expedited Schedule**

6 The parties at this time do not believe that this is the type of case that can be handled on
 7 an expedited basis with streamlined procedures.

8 **XVII. SCHEDULING**

9 The parties agree to the following schedule:

EVENT	PARTIES' PROPOSED DATES
Initial Disclosures	August 10, 2007
Initial Case Management Conference	August 17, 2007
Disclosure of Asserted Claims and Preliminary Infringement Contentions (Patent L.R. 3-1)	August 31, 2007
Exchange of Documents Supporting Infringement Contentions (Patent L.R. 3-2)	August 31, 2007
Disclosure of Preliminary Invalidity Contentions (Patent L.R. 3-3)	October 15, 2007
Exchange of Documents Supporting Invalidity Contentions (Patent L.R. 3-4)	October 15, 2007
Simultaneous Exchange of Proposed Terms and Claim Elements for Construction (Patent L.R. 4-1(a))	October 29, 2007
Meet and Confer re: Proposed Terms and Claim Elements for Construction (Patent L.R. 4-1(b))	November 5, 2007
Last Day to Amend Complaint/Counterclaims	November 16, 2007
Simultaneous Exchange of Preliminary Claim Constructors (Patent L.R. 4-2(a))	November 19, 2007
Preliminary Exchange of Extrinsic Evidence (Patent L.R. 4-2(b))	November 19, 2007
Joint Claim Construction Statement Due (Patent L.R. 4-3)	December 14, 2007

1	Discovery on Claim Construction Closes (Patent L.R. 4-4)	January 14, 2007
2	Opening Claim Construction Brief(s) Due (Patent L.R. 4-5(a))	February 1, 2008
3	Opposition Claim Construction Brief(s) Due (Patent L.R. 4-5(b))	February 15, 2008
4	Reply Claim Construction Brief(s) Due (Patent L.R. 4-5(c))	February 22, 2008
5	Tutorial	March 5, 2008
6	Claim Construction Hearing	March 12, 2008
7	Fact Discovery Cut-off	Remainder of dates to be set during post-claim construction case management conference
8	Disclosure of Identity of Liability Experts	
9	Written Expert Reports Due	
10	Rebuttal Expert Reports Due	
11	Expert Discovery Cut-off	
12	Deadline for Filing Dispositive Motions	
13	Pre-trial Conference	
14	Trial	

18 **XVIII. Trial**

19 Both parties have requested a jury trial and agree that trial will last three to four weeks.

20 **XIX. Disclosure Of Non-Party Interested Entities Or Persons**

21 The parties have each filed the required Certification of Interested Entities or Persons as
22 required by Civil Local Rule 3-16.

23 AOS certifies that that the following listed persons, associations of persons, firms,
24 partnerships, corporations (including parent corporations) or other entities (i) have a financial
25 interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-
26 financial interest in that subject matter or in a party that could be substantially affected by the
27 outcome of this proceeding:

1 ALPHA & OMEGA SEMICONDUCTOR (SHANGHAI) LIMITED

2 ALPHA & OMEGA SEMICONDUCTOR (HONG KONG) LIMITED

3 Fairchild certifies that that the following listed persons, associations of persons, firms,
 4 partnerships, corporations (including parent corporations) or other entities (i) have a financial
 5 interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-
 6 financial interest in that subject matter or in a party that could be substantially affected by the
 7 outcome of this proceeding:

8 FAIRCHILD SEMICONDUCTOR CORPORATION

9 **XX. Patent Related Issues Pursuant To Patent Local Rule 2-1(a)**

10 **A. Order of Presentation at the Claims Construction Hearing**

11 The parties propose that AOS will present first at the claims construction hearing with
 12 respect to the construction of claims of the AOS patents-in-suit and that Fairchild will present
 13 first at the claims construction hearing with respect to the construction of the claims of the
 14 Fairchild patents-in-suit.

15 **B. Extrinsic Evidence and Live Testimony at the Claims Construction Hearing**

16 Currently, the parties do not anticipate presenting live testimony at the Claims
 17 Construction Hearing. If these positions change during the course of discovery and briefing, the
 18 parties will seek the Court's approval should they decide to present extrinsic evidence at the
 19 hearing pursuant to the Court's Standing Order for Patent Cases ¶ 10.

20 **C. Need for Limits on Discovery Relating to Claims Construction**

21 The parties do not envision the need for any limits on discovery related to claims
 22 construction, other than those provided by the Federal Rules or as provided by this Case
 23 Management Order.

24 **D. Scheduling of a Claims Construction Prehearing Conference**

25 At this time, the parties do not anticipate the need for the scheduling of a Claim
 26 Construction Prehearing Conference.

1 Dated: August 10, 2007

MORGAN, LEWIS & BOCKIUS LLP

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By: /s/ Daniel Johnson, Jr.

Daniel Johnson, Jr.
Attorneys for Plaintiffs and
Counterdefendants
ALPHA & OMEGA SEMICONDUCTOR,
LTD., AND ALPHA & OMEGA
SEMICONDUCTOR, INC.

Dated: August 10, 2007

TOWNSEND AND TOWNSEND AND
CREW LLP

By: /s/ Eric P. Jacobs

Eric P. Jacobs
Attorneys for Defendant and
Counterclaimant
FAIRCHILD SEMICONDUCTOR
CORPORATION

[PROPOSED] CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as
the Case Management Order for the case. The parties shall comply with this Order.

IT IS SO ORDERED.

Dated:

HON. JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

ATTESTATION PURSUANT TO GENERAL ORDER 45

I, Amy M. Spicer, attest that concurrence in the filing of this document has been obtained from counsel for plaintiffs, counterdefendants, counterclaimants, and defendants. I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 10th day of August 2007, at San Francisco, California.

/s/ Amy M. Spicer
Amy M. Spicer